

# Appropriation Law Course

## ALC 0102

Revised 2/13

### **Preliminary Review of Anti-Deficiency Act (ADA) Violations**



# Overview

- ADA Violation Sanctions
- Reporting an ADA Violation
- ADA Preliminary Review
- Preliminary Review Results

# Learning Objectives

31 U.S.C § 1102

# ADA Violation Sanctions

- Administrative Penalties

- Military
- Civilian

31 U.S.C §

1349

31 U.S.C §

1518

- Criminal Penalties

- Fined: NTE \$5,000
- Imprisoned: NTE 2 years
- (Mil) Subject to UCMJ

31 U.S.C §

1350

31 U.S.C §

1519



DoD FMR Vol 14,  
Ch 9

# ADA Violation Sanctions

- “Good faith” does not relieve responsibility
- Factors may be considered only to determine appropriate level of discipline
  - “Heavy workload at year end”
  - “Past exemplary record”



# Reporting an ADA Violation

- Agency head must formally report ADA violations
  - President of the United State
  - President of the Senate (VP)
  - Speaker of the House
- Suspected ADA violations are handled IAW

31 U.S.C §

1351

DoD FMR Vol 14,  
Ch 3

- Reported within 10 working days
  - Through chain of command (CoC)
  - To Under Secretary of Defense (Comptroller)

# Reporting an ADA Violation

- Report must include
  - Accounting classification of funds
  - Name/location of activity in alleged violation (issuing fund Auth)
  - Amount and nature of alleged violation
  - Date of alleged violation
  - Means of discovery
  - Description of facts & circumstances of case
  - Anticipated dates of completion & submission of report
  - POC info for investigator or members of review team



# Reporting an ADA Violation

- Evaluate the potential violation
  - For validity
  - For completeness
  - To determine if a potential violation occurred

# Reporting an ADA Violation

- Preliminary Review initiated by external sources
  - DoD Component may be directed to initiate a Review
  - Considered the “date of discovery”
  - If DoD Component disagrees
    - Provide applicable written comments
    - Resolution between agency

DoD Directive  
7650.3

ting



# ADA Preliminary Review

- Gather facts
- Establish whether a reportable violation has

31 U.S.C §  
1341

- “Exceeding”
- “Advance of”

31 U.S.C §  
1342

- Voluntary Services

31 U.S.C §  
1517

- Allotment or Formal Subdivision

# ADA Preliminary Review

- Component's responsibility
  - Assign investigator or team
    - To determine *amount* and *cause*
  - Complete the review within 14 weeks of discovery
- Preliminary Review Focus
  - Potential violation
  - NOT the corrective action
    - Developed during formal investigation

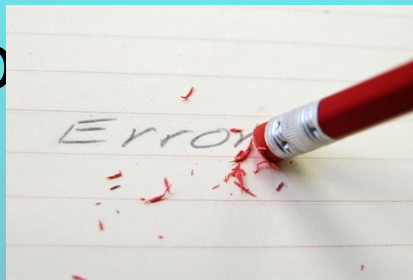


# ADA Preliminary Review

- Preliminary Investigator or Review Team Lead
  - No vested interest in the outcome of the review
  - Capable of conducting an impartial review
  - Trained and qualified individual appointed by
    - Commander of a Major Command (in Chain of Command)
  - From an organization external to the installation-level organization being reviewed
  - Free of personal, external, and organizational impairments

# ADA Preliminary Review

- Check for Accounting Errors
  - Duplicate Obligations
  - Obligations charged to invalid or improper accounts
  - Inaccurate fund status at time of transaction
- If review determines an error has occurred
  - Must be reported to the DoD Component
  - Make the appropriate accounting correction(s)



# ADA Preliminary Review

- Fund Control Personnel are responsible for
  - The proper assignment of funding on a document
  - Examples
    - Resource Managers
    - Fund Holders
    - Funds Certifying Officials
    - Authorizing Officials



# ADA Preliminary Review

- Fund Control Certification
  - If proper funds were available at the time of correction,
    - Potential purpose or time violation may be corrected
  - If certification is not provided,
    - Preliminary Review report shall include evidence to support a determination that a violation has occurred
      - 31 U.S.C § 1341 or 31 U.S.C § 1517

# QUESTIONS ??



# ADA Preliminary Review Results

- Interpretation and Legal Issues
  - Violation may depend upon interpretation of statutory or regulatory constraints
    - Appropriation
    - Fiscal Year
- In all cases, request and obtain advice of legal counsel
  - Area Counsel is a subject matter expert in civil law
  - Not a Staff Judge Advocate (expert in military justice)

# ADA Preliminary Review Results

- Documented in a Report
- Forwarded for approval to the DoD Component and coordinated with Component Legal Counsel
  - Action complete *if both concur that no violation occurred*
  - Formal investigation *initiated within 2 weeks if the DoD Component determines a violation did occur*



# Case Study Demonstration

**GBOSS**  
**EEE**

ASK HIM! HE KNOWS

# Practical Application

**BOB THE BUILDER**

**CASE STUDY**



# Where can I find ADA Violation information?

The screenshot shows a Microsoft Internet Explorer browser window displaying the GAO (U.S. Government Accountability Office) website. The address bar shows the URL <http://gao.gov/legal/lawresources/antideficiencyrpts.html>. The page title is "View Antideficiency Act Reports - Microsoft Internet Explorer provided by NMCI".

The GAO logo and "U.S. Government Accountability Office" are at the top. A search bar is present with the text "Keyword or Report #" and a "Search" button. Below the logo, there are navigation tabs: "Reports & Testimonies", "Legal Decisions & Bid Protests" (which is selected), "About GAO", "Careers", and "Multimedia".

Under the "Legal Decisions & Bid Protests" tab, there is a sub-navigation bar with links: "Legal Decisions: Overview", "Bid Protests", "Red Book", "Appropriations Law" (which is selected), "Contract Appeals Board", and "Federal Vacancies".

The main content area is titled "View Antideficiency Act Reports". It contains a paragraph: "Following are summaries of Antideficiency Act reports for each fiscal year. For more information on individual violations and actions taken, contact the agencies filing the reports."

Below this paragraph, there is a list of reports, each starting with "ANTIDEFINICIENCY REPORT" in red, followed by "Antideficiency Act Report Information, Fiscal Year" and the year. The years listed are 2011, 2010, 2009, 2008, 2007, 2006, and 2005.

At the bottom of the list, there is a link: "Learn more about the Antideficiency Act".

The left sidebar contains a list of links: "Overview", "View Recent Appropriation Decisions", "Appropriations Law FAQs", "Antideficiency Act Resources", "View Antideficiency Act Reports", "Submitting Antideficiency Act Reports to GAO", "Antideficiency Act Background", "Appropriations Law Forums", and "Principles of Appropriations Law Training".

The browser's status bar at the bottom shows "Internet" and "100%".

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